

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED
MAR 21 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
QWEST CORPORATION)
and)
EL PASO COUNTY TELEPHONE)
)
Joint Petition for Waiver of the Definition)
of "Study Area" Contained in Part 36,)
Appendix-Glossary of the Commission's Rules)

WC Docket No. _____

CC: 96-45

JOINT PETITION FOR EXPEDITED WAIVER

Qwest Corporation ("QC") and El Paso County Telephone ("El Paso") (collectively, "Petitioners") hereby request waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Federal Communications Commission's ("Commission") Rules with respect to transfers previously approved by the Public Utilities Commission of the State of Colorado ("Colorado PUC"). Specifically, Petitioners seek approval to transfer a portion of operating area currently in Qwest's study area from Qwest to El Paso, and likewise to transfer a portion of operating area currently in El Paso's study area from El Paso to Qwest, as described in the Appendix.

FACTS

There are no assets involved in the proposed transfer of areas. In addition, no existing customers reside within the areas proposed to be transferred. This transfer is being implemented, if approved, in anticipation of future demand. A new development, called Banning Lewis Ranch, is being built in Qwest's Colorado Springs exchange. Approximately two-thirds of Banning Lewis Ranch is situated within Qwest's study area and approximately one-third is within El Paso's study area. A second development, called Santa Fe Springs, is scheduled to be

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built within El Paso's El Paso exchange. Approximately two-thirds of the Santa Fe Springs development is situated within El Paso's service territory and approximately one-third is situated in Qwest's Peyton exchange service territory. Petitioners believe it is mutually beneficial for El Paso to transfer to Qwest the El Paso portion of the Banning Lewis Ranch territory, and for Qwest to transfer to El Paso the Qwest portion of the Santa Fe Springs territory.

The Banning Lewis Ranch development is a green field development comprised of 24,000 total acres of land, with approximately 8,000 acres in the El Paso study area and 16,000 acres in Qwest's study area. Construction within Banning Lewis Ranch has begun on the north end of the development within Qwest's territory and is not expected to reach El Paso's territory for at least the next three years. In order for El Paso to serve the Banning Lewis Ranch development, significant capital investment would be required, such as expanding business office capabilities, network infrastructure and adding installation vehicles and employees.

The Santa Fe Springs development is also a green field development comprised of an estimated 6,500 acres of land. Santa Fe Springs is expected to be a 5,300 home development with phase one construction of approximately 1,400 homes to begin in the third quarter of 2007.

COMPLIANCE WITH "ONE PERCENT" CONDITION

"In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, we analyze whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount equal to or greater than one-percent of the total high-cost fund for the pertinent funding year."¹ There will be little, if any, shift in high cost support in this funding year due to the proposed transaction. Qwest does not receive any such support.

¹*In the Matter of M&L Enterprises, Inc., d/b/a Skyline Telephone Company; Petition for Waiver of Sections 36.611, 36.612, and 69.2 (hh) of the Commission's Rules, Order, 19 FCC Rcd 6761, 6767 ¶ 15 (2004).*

Moreover, the land transferred from El Paso to Qwest is not slated to be developed for another three years. Accordingly, the transfer from El Paso to Qwest would result in a decrease in support, if anything. As to the transfer from Qwest to El Paso, it is not clear when there will be any development on the land transferred from Qwest. The level of support cannot be estimated until it is known how many residences are going to be built, and where they will be located in relation to El Paso's central office.

STUDY AREA WAIVER

The Commission froze study area boundaries as of November 15, 1984 to prevent telephone holding companies from setting up high cost exchanges within their existing service territories as separate companies in order to maximize high cost support.² The Commission expressly stated at the time that study areas were not frozen to "discourage the acquisition of high cost exchanges or the expansion of service to cover high cost areas."³

In reviewing study area waiver petitions, the Commission employs the following three-prong standard: (1) the change in study area boundaries must not adversely affect the Universal Service Fund; (2) no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and (3) the transfer must be in the public interest.⁴

² *In the Matter of MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Decision and Order, 57 R.R.2d 511 (1984).

³ *MTS and WATS Market Structure; and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 49 Fed. Reg. 48325, 48337 (Dec. 12, 1984).

⁴ See, e.g., *In the Matter of US West Communications, Inc. and South Central Utah Telephone Association, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and South Central Utah Telephone Association, Inc. Petition for Waiver of Sections 61.41(c) of the Commission's Rules*, Memorandum Opinion and Order, 9 FCC Rcd 198, 199-200 ¶ 12 (1993); *In the Matter of US West Communications, Inc. and Triangle Telephone Cooperative Association, Inc. and Central Montana Communications*, Memorandum Opinion and Order, 9 FCC Rcd 202, 205 ¶ 17 (1993).

Universal Service Fund. As stated above, the change will not adversely affect the Universal Service Fund. There will be little, if any, shift in the level of funding as a result of this transaction.

State Commission Approval. The Colorado PUC has previously issued an order approving the proposed transfer, and finding it to be in the public interest because it is not adverse to any customer interests, will not adversely affect the public switched network, and will not compromise the financial integrity of the Petitioners.⁵

Public Interest Benefits. It would be in the public interest to allow Petitioners to make the proposed transfer so that Qwest can provide service to the Banning Lewis Ranch development and so that El Paso can provide service to the Santa Fe Springs development. Moreover, as stated above, the Colorado PUC has already found the transaction to be in the public interest.

CONCLUSION

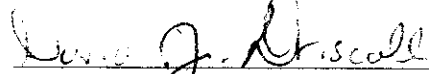
Petitioners have met their burden of proving that the proposed study area boundary waiver will not adversely affect the Universal Service Fund; is not opposed by the Colorado PUC, and will be in the public interest. Therefore, Petitioners respectfully request waiver of the frozen study area boundaries to allow Qwest and El Paso to rearrange their study areas to accommodate proposed development.

⁵ See Decision No. C07-0093, Before the Public Utilities Commission of the State of Colorado, Decision Granting Application for Approval of Revised Exchange Area Maps, Review of Proposed Advice Letter and to Change Each Provider's Designation as Provider of Last Resort, Docket No. 06A-665T, Adopted January 31, 2007, attached hereto, at ¶ 12.

Respectfully submitted,

EL PASO TELEPHONE COMPANY

By:



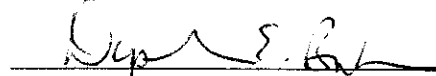
David J. Driscoll
Garlin Driscoll Howard, LLC
Suite 101
245 Century Circle
Louisville, CO 80027

deb by permission

Its Attorney

QWEST CORPORATION

By:



Craig J. Brown
Daphne E. Butler
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6653

Its Attorneys

APPENDIX

PROPOSED TRANSFER

The Joint Petitioners request that the following Qwest operating area within its Peyton exchange be transferred to El Paso.

That portion of the Qwest Peyton exchange lying south of the following described line:

Beginning at a point on the southern boundary of the Peyton exchange, described as the SW corner of section 35, T12S, R64W, 6th P.M.

Thence north to the NW corner SW1/4 SW1/4 section 35, T12S, R64W.

Thence east to the NE corner SW1/4 SW1/4 section 35, T12S, R64W.

Thence north to the NW corner NE1/4 NW1/4 section 35, T12S, R64W.

Thence east to the NE corner section 35, T12S, R64W.

Thence south to the NW corner SW1/4 section 36, T12S, R64W.

Thence east to the NE corner SW1/4 section 36, T12S, R64W.

Thence south to the SE corner SW1/4 section 36, T12S, R64W., the point of termination, also lying on the southern boundary of the Peyton exchange.

Also,

That portion of the Qwest Peyton exchange lying south of the following described line:

Beginning at a point on the southern boundary of the Peyton exchange, described as the SW corner SE1/4 SE1/4 section 31, T12S, R63W, 6th P.M.

Thence north to the NW corner SE1/4 NE1/4 section 31, T12S, R63W.

Thence east to the SW corner NE1/4 NE1/4 section 32, T12S, R63W.

Thence north to the NW corner NE1/4 NE1/4 section 32, T12S, R63W.

Thence east to the NE corner section 32, T12S, R63W.

Thence south to the SE corner NE1/4 section 32, T12S, R63W.

Thence west to the SE corner SW1/4 NE1/4 section 32, T12S R63W.

Thence south to the SE corner SW1/4 SE1/4 section 32, T12S, R63W, the point of termination, also lying on the southern boundary of the Peyton exchange.

The areas are located in El Paso County, Colorado.

Additionally, the Petitioners request that the following El Paso operating area be transferred to the Qwest Colorado Springs exchange:

That portion of the El Paso exchange lying west of the following described line:

Beginning at a point on the easterly boundary of the Qwest Colorado Springs exchange, described as the SW corner of section 36, T14S, R65W, 6th P.M.

Thence east to the SE corner of SW1/4 section 36, T14S, R65W.

Thence north to the NE corner of NW1/4 section 36, T14S, R65W.

Thence east of the NE corner of section 36, T14S, R65W.

Thence north to the NE corner of section 25, T14S, R65W.

Thence west to the NW corner of NE1/4 of section 25, T14S, R65W.

Thence north to the NE corner of SE1/4 NW1/4 section 13, T14S, R65W.

Thence west to the NW corner of SE1/4 NW1/4 section 13, T14S, R65W.

Thence south to the SW corner of SE1/4 NW1/4 section 13, T14S, R65W.

Thence west to the SW corner of NW1/4 section 13, T14S, R65W.

Thence north to the NE corner of SE1/4 NE1/4 section 14, T14S, R65W.

Thence west to the NW corner of SE1/4 NE1/4 section 14, T14S, R65W.

Thence north to NE corner of NW1/4 NE1/4 section 14, T14S, R65W.

Thence east to SE corner of SW1/4 section 12, T14S, R65W.

Thence north to the NE corner of SW1/4 section 12, T14S, R65W.

Thence east to SE corner SW1/4 NE1/4 section 12, T14S, R65W.

Thence north to NE corner of SW1/4 NE1/4 section 12, T14S, R65W.

Thence east to the SE corner NE1/4 NW1/4 section 7, T14S, R64W, 6th P.M.

Thence north to NE corner NE1/4 NW1/4 section 7, T14S, R64W.

Thence west to NW corner NE1/4 NW1/4 section 7, T14S, R64W.

Thence north to the NE corner of SW1/4 SW1/4 section 6, T14S, R64W.

Thence east to SE corner NE1/4 SW1/4 section 6, T14S, R64W.

Thence north to NE corner SE1/4 NW1/4 section 6, T14S, R64W.

Thence west to NW corner of SW1/4 NW1/4 section 6, T14S, R64W.

Thence north to NE corner of section 1, T14S, R65W, 6th P.M.

Thence west to NW corner of section 1, T14S, R65W.

Thence north to NE corner of section 35, T13S, R65W, 6th P.M.

Thence east to SE corner of SW1/4 section 25, T13S, R65W.

Thence north to NE corner of SW1/4 section 25, T13S, R65W.

Thence west to SE corner of SW1/4 NW1/4 section 25, T13S, R65W.

Thence north to NE corner of SW1/4 NW1/4 section 25, T13S, R65W.

Thence west to NW corner of SW1/4 NW1/4 section 25, T13S, R65W.

Thence north to NE corner of section 23, T13S, R65W, 6th P.M., the point of termination, also lying on the easterly boundary of the Qwest Colorado Springs exchange boundary.

The area is located in El Paso County, Colorado.

FEB 02 2007

Decision No. C07-0093

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06A-665T

IN THE MATTER OF THE JOINT APPLICATION OF QWEST CORPORATION AND EL PASO COUNTY TELEPHONE COMPANY TO REARRANGE THEIR EXCHANGE AREA BOUNDARIES, REQUEST FOR REVIEW CONCURRENT WITH THE REVIEW OF EACH APPLICANT'S PROPOSED ADVICE LETTER FILINGS AND TO CHANGE EACH PROVIDER'S DESIGNATION AS PROVIDER OF LAST RESORT

**DECISION GRANTING APPLICATION
FOR APPROVAL OF REVISED EXCHANGE AREA MAPS,
REVIEW OF PROPOSED ADVICE LETTER AND TO
CHANGE EACH PROVIDER'S DESIGNATION AS
PROVIDER OF LAST RESORT**

Mailed Date: February 1, 2007
Adopted Date: January 31, 2007

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the Joint Application (Application) filed by Qwest Corporation (Qwest) and El Paso county Telephone (El Paso) (together, Applicants) to revise portions of each companies' operating area, to review the associated proposed Advice Letter filings concurrently with the review of this application and to change each provider's designation as provider of last resort.

2. Applicants propose to transfer portions of the El Paso service territory to the Qwest service territory in the Colorado Springs Exchange, and to transfer portions of the Qwest service territory in the Peyton Exchange to the El Paso Exchange. On January 26, 2007, a

supplement to the Application was filed which provided a summary of the proposed changes to each Applicant's exchange maps.

3. Applicants indicate that this change is being requested in order to better serve future construction developments to be located partially in both the existing Qwest and El Paso service territories. The Banning Lewis Ranch Development (BLRD), to be located in Qwest's Colorado Springs Exchange, contains a relatively smaller portion of the planned development area in El Paso's existing service territory. The application states that neither El Paso nor Qwest currently have any existing facilities within the BLRD area, and that El Paso would incur significant costs to provide the infrastructure and facilities required for the development. The Application requests that the BLRD, located in El Paso's exiting service territory, be exchanged for a portion of Qwest's existing territory in which El Paso desires to offer service to a future home development named Santa Fe Springs Development (SFSD).

4. Both BLRD and SFSD are green field developments, having neither any existing telecommunications infrastructure, nor existing customers.

5. The Applicants request that the Commission release each provider of its respective obligations as providers of last resort for the service territories that are transferred, if granted by the Commission. Each company agrees to become the provider of last resort in the newly acquired service territories.

6. Qwest notes in the Application that the territory that it requests be transferred from El Paso to the Qwest Colorado Springs Exchange will be subject to "Market Regulation" since it would reside in a zone of competition as described in Commission Decision C05-0802 and the Commission's Rules at 4 *Code of Colorado Regulations* (CCR) 723-2203 (d) (VI) (A).

7. The Application contains two proposed advice letters and associated tariff sheets that Applicants intend to file, if the Commission approves the request for territory exchange. The filing requests that the Commission approve the contents of the advice letters and tariff sheets and that the Applicants be able to file these in compliance with the Commission's order to become effective on not less than one day's notice, in combination with the Application.

8. There is an acknowledgement made in the Application that if the Commission approves the requested territory exchange, a joint Part 36 Waiver is required to be filed with the Federal Communications Commission (FCC) for its approval prior to closing the transaction. On January 26, 2007, a supplement to the Application was filed which modified the request to allow the Applicants to file an advice letter and tariff sheets on not less than one day's notice, should the FCC grant the Part 36 Waiver.

9. The Applicants indicate, as there are no customers impacted by the proposed exchange of service territory, that neither a transition plan nor customer notice is required.

10. Notice was posted on the Commission's web site on December 26, 2006. Interventions were due on or before January 25, 2007. None were filed.

11. The proposed advice letters and associated tariff pages revising the Qwest Colorado Springs, Peyton and El Paso Exchange boundaries attached to the Application were reviewed and Staff has no concerns regarding the filings.

B. Findings

12. We have reviewed the revision of these two exchanges and find the proposed revisions are not adverse to any customer interests. We further find the implementation of those revisions will not adversely affect the public switched network. Finally, we find the revision of

the exchanges will not compromise the financial integrity of the providers. Therefore, we find the proposed revisions to the two exchanges to be in the public interest.

13. Consistent with § 40-15-111(2), C.R.S., we find the Joint Application for the boundary changes of Qwest Peyton Exchange, Colorado Springs and the El Paso Exchanges should be granted.

II. ORDER

A. The Commission Orders That:

1. The Joint Application filed by Qwest Corporation and El Paso County Telephone is deemed complete.

2. The Joint Application filed by Qwest Corporation and El Paso County Telephone is granted.

3. Both Qwest Corporation and El Paso County Telephone are relieved of their obligations as providers of last resort in the territory that is transferred to one another but will become the providers of last resort in the territory that is received as a part of the transaction.

4. Citing this Order as authority, Qwest Corporation and El Paso County Telephone shall make an Advice Letter and accompanying tariff sheet filing implementing the tariff changes on not less than one-day's notice. The Advice Letter and accompanying tariff sheets shall not be filed until the applicants receive the appropriate Part 36 Waiver for the transaction from the FCC.

5. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 31, 2007.

(SEAL)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

POLLY PAGE

CARL MILLER

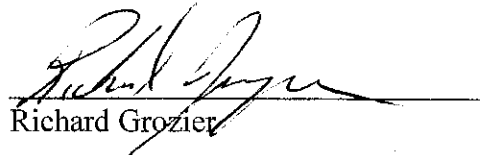
Commissioners

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused a copy of the foregoing **JOINT PETITION FOR EXPEDITED WAIVER** to be hand delivered on February 22, 2007 to the parties listed below.*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW B-204
445 12th Street, N.W.
Washington, DC 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, N.W.
Washington, DC 20554


Richard Grozier

February 21, 2007

* The original Joint Petition for Expedited Waiver, and the associated filing fee and Form 159, were transmitted via overnight delivery to the Mellon Bank in Pittsburgh on February 21, 2007 for filing with the FCC.